

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ALEX PERRY NEAL, #0195743

VS.

PLANO POLICE DEPT., ET AL.

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CIVIL ACTION NO. 4:19cv330

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the complaint should be dismissed without prejudice as improvidently filed. Plaintiff filed objections.

A review of the history of the case reveals that Plaintiff filed an affidavit complaining about actions of certain members of the Plano Police Department, a state district judge, and a private individual. His affidavit was construed as a civil rights complaint, but Plaintiff was given the opportunity to clarify his intent. Plaintiff was instructed to file a standard § 1983 form if he intended to pursue a civil rights action. Plaintiff did not file the standard § 1983 form, but instead, filed a motion to transfer venue and a motion to correct court record. After the Report and Recommendation was issued, Plaintiff filed objections, asserting he filed three criminal complaint affidavits to show the illegal actions of the named defendants. It appears that Plaintiff continues in his efforts to have this Court prosecute the named defendants. As noted in the Report and Recommendation, however, prosecutors and district attorneys decide whom to prosecute and the charges to bring, *Bordenkircher, v. Hayes*, 434 U.S. 357, 364 (1978). Plaintiff may present his complaints to the appropriate prosecutor or district attorney, but the Court, as a member of the Judicial Branch, does not have authority to initiate a criminal investigation or bring criminal charges. Instead, the Executive Branch

is responsible for conducting criminal investigations and bringing criminal charges. *See United States v. Nixon*, 418 U.S. 683, 693 (1974) (“the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”).

Having made a *de novo* review of the objections raised by Plaintiff to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that the complaint is **DISMISSED** without prejudice. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 1st day of August, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE